

## **JERSEY COMPETITION REGULATORY AUTHORITY**

### **INITIAL NOTICE OF THE PROPOSED GRANT OF AN INTERIM CLASS I POSTAL OPERATOR'S LICENCE TO HI-SPEED FREIGHT SERVICES LIMITED**

#### **Under Article 24 of Postal Services (Jersey) Law 2004**

The Jersey Competition Regulatory Authority ('JCRA') in exercise of its powers under Article 15 of the Postal Services (Jersey) Law 2004 ('the Law') proposes to grant Hi-Speed Freight Services Limited ('Hi-Speed') a 2 year interim Class I Postal Operator's Licence (referred to hereinafter as the 'Licence'). The Licence would permit the conveyance of Licensed Letters collected from Business customers located in Jersey to Jersey Airport for collection by DHL Global Mail (UK) Ltd for onward conveyance and final delivery to International destinations, subject to the Financial Limitation set out in the draft.<sup>1</sup>

The Law requires the JCRA to perform its functions in a manner consistent with the duties set forth in Articles 8(1) and 8(2). The JCRA's consideration of these duties is detailed below.

#### **I. Considerations under Article 8(1) of the Law**

1. The JCRA has a primary duty under Article 8(1)(a) of the Law to perform its functions in such manner best calculated to ensure that (so far as in its view is reasonably practicable) such postal services are provided, both within Jersey and between Jersey and the rest of the world, as satisfy all current and prospective demands for them, wherever arising. In considering whether postal services satisfy demands under Article 8(1)(a), under Article 8(3) the JCRA shall have regard, inter alia, to whether the services are rapid, of high quality and reliable, and are affordable by and accessible to the highest number of business and domestic users.
2. There is currently demand for the postal services subject to the proposed Licence. Specifically, Hi-Speed has been providing these services to customers in Jersey for over four years, and its provision of these services pre-dates the Law's coming into force on 1 July 2006. Hi-Speed has applied to the JCRA for a Licence under Article 3 of the Law to cover these existing services.
3. In addition to satisfying current demand for postal services, the proposed Licence would potentially satisfy prospective demand for postal services. Specifically, Hi-Speed has informed the JCRA that it wishes to grow its business for postal

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<sup>1</sup> Unless otherwise stated, capitalized terms used in this Initial Notice have the same definitions as stated in the proposed Licence.

services in Jersey. The proposed Licence would permit Hi-Speed to do this, subject to the Financial Limitation discussed below.

4. The JCRA considers that the services are rapid, of high quality, reliable, affordable and accessible. In terms of speed, the transit times from point of collection to final delivery appear equivalent to or better than other international services currently on offer in Jersey. Regarding affordability, the services that would be subject to the proposed Licence are offered by Hi-Speed at competitive prices in Jersey.
5. Concerning the primary duty set out in Article 8(1)(b) of the Law, as observed in the JCRA's Initial Notice to Jersey Post Limited ('JP') dated 15 September 2008, this duty has been effectively nullified by JP's full repayment in May 2008 of the balance of its pensions liability to the States of Jersey. Thus, this duty requires no further consideration here.

## **II Considerations under Article 8(2) of the Law**

6. Article 8(2) of the Law specifies additional duties to which the JCRA must have regard, although only in so far as is consistent with its primary duties under Article 8(1). The JCRA's consideration of these Article 8(2) duties is set forth below.

### **A. Article 8(2)(a)**

7. The JCRA has a duty under Article 8(2)(a) to perform its functions in such manner as it considers best calculated to protect and further the short term and long term interests of users within Jersey of postal services and to perform them, wherever it considers appropriate, by promoting competition among persons engaged in commercial activities connected with postal services in Jersey.
8. Because Hi-Speed has applied for a Licence to cover licensable postal services it currently provides to users in Jersey, the JCRA considers that the grant of a Licence to Hi-Speed would protect the interests of these users. Moreover, the ability of Hi-Speed to grow its services subject to the Licence, up to the Financial Limitation, would potentially benefit these and other users of postal services through introducing more competition and greater customer choice to those Business customers located in Jersey, who wish to send Licensed Letters to International destinations.

### **B. Article 8(2)(b)**

9. The JCRA has a duty under Article 8(2)(b) to perform its functions in such manner as it considers best calculated to promote efficiency, economy and effectiveness in commercial activities connected with postal services in Jersey. It is generally recognised that competition serves to increase productive, dynamic

and allocative efficiencies, thereby promoting the objectives referred to in Article 8(2)(b). The grant of the Licence would facilitate the promotion of competition for postal services in Jersey, and thereby advances these objectives.

**C. Article 8(2)(c)**

10. The JCRA has a duty under Article 8(2)(c) to perform its functions in such manner as it considers is best calculated to further Jersey's economic interests.
11. Jersey is a world-class provider of financial services. This sector is, by far, the single largest component of Jersey's economy, representing roughly half of Jersey's GVA and over a quarter of its total employment.<sup>2</sup> As the JCRA has previously observed, many financial service providers rely heavily on the provision of high quality, reliable and affordable postal services.<sup>3</sup> The grant of a Licence to Hi-Speed would further this goal because Hi-Speed's main customers are banks and other financial-related institutions.

**D. Article 8(2)(d)**

12. The JCRA has a duty under Article 8(2)(d) to perform its functions as it considers is best calculated to impose a minimum of restriction on persons engaged in commercial activities connected with postal services in Jersey. Recognising this duty, the JCRA has drafted the proposed Licence as narrowly as possible.

**E. Article 8(2)(e)**

13. The JCRA has a duty under Article 8(2)(e) to have regard to the need to ensure that postal service providers have sufficient financial and other resources to conduct those activities.
14. Hi-Speed has demonstrated to the JCRA that it has sufficient financial and other resources to provide the postal services set out in the proposed Licence.
15. Furthermore, the JCRA is satisfied that the grant of a Licence to Hi-Speed would not result in JP having insufficient financial and other resources to fulfil its current universal service obligations ("USO"). The activities permitted by the proposed Licence are subject to a Financial Limitation of £150,000 of turnover earned per annum from the licensed services. This Financial Limitation is subject to strict reporting requirements, plus an automatic penalty provision that provides that if Hi-Speed exceeds the Financial Limitation in any given year, the £150,000 Financial Limitation is automatically reduced in the subsequent year by the amount exceeded (but not vice-versa). Exceeding the Financial Limitation may also provide grounds for the JCRA to modify or revoke the Licence.

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<sup>2</sup> States of Jersey Statistics Unit, Jersey in Figures, 2006.

<sup>3</sup> See JCRA, Initial Notice to Jersey Post Limited Concerning Price Control at 3 (24 Sept. 2007).

16. In addition, JP reported in 2007 post tax profits of approximately £5 million on a turnover of approximately £53.8 million.<sup>4</sup> This, combined with the JCRA's preliminary estimates of the cost of the USO and the Financial Limitation discussed above, lead the JCRA to conclude that the grant of the proposed Licence would not result in JP having insufficient financial and other resources to fulfil its current USO obligations.
17. Furthermore, as noted above, the JCRA proposes to grant the Licence on an interim basis, for a 2-year Term. This Term anticipates a review of the postal market in Jersey which the JCRA intends to undertake, to see if market liberalisation through the entry of new providers of postal services (as opposed to granting licenses to existing operators such as Hi-Speed) is appropriate under the Law. After this interim period, any further extension of the Licence's scope or Term would be the subject of a separate process under Part 5 of the Law. The limited term of the proposed Licence further supports the JCRA's conclusion that the granting thereof would not result in JP having insufficient financial and other resources to fulfil its current USO obligations.

**F. Article 8(2)(f)**

18. Article 8(2)(f) requires the JCRA to have regard to any special needs of persons who are disabled, have limited financial resources, or other special needs. The JCRA considers that the services to be provided under the Licence are neutral in terms of Article 8(2)(f).

**III Date when the Proposed Licence will take Affect**

19. The draft Licence will take effect on **8 November 2008**, unless the JCRA receives representations or objections about the proposal prior to that date, in which case the effective date will be specified in any Final Notice issued by the JCRA under Article 24(5) of the Law.
20. A copy of the draft Licence is available for inspection between the hours of 9:00 am and 5:00 pm Monday to Friday at the offices of the JCRA (address provided below). A copy also is available on the JCRA's website, [www.jcra.je](http://www.jcra.je).

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<sup>4</sup> Jersey Post International Limited Annual Report 2007.

#### **IV Period for Written Representations and Objections**

21. Any written representations or objections in respect of the proposal to grant this Licence may be made by **midnight on 7 November 2008** to the JCRA at:

Jersey Competition Regulatory Authority  
2nd Floor, Salisbury House,  
1-9 Union Street,  
St Helier, Jersey  
JE2 3RF

Or by e mail to [p.hamilton@jcra.je](mailto:p.hamilton@jcra.je) or by fax to +44(0) 1534 514991

**9 October 2008**

***By Order of the Board of the JCRA***